Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
518-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

POSITIVE PAIN MANAGEMENT
2301 FOREST LANE STE 310
GARLAND TX 75042

DWC Claim #:
Injured Employee:
Date of Injury:
Employer Name:
Insurance Carrier #:

Respondent Name
CONTINENTAL CASUALTY CO

Carrier's Austin Representative Box
Box Number 47

MFDR Tracking Number
M4-06-5883-01

MFDR Date Received
FEBRUARY 18, 2004

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "…The basis given by CNA for denying payment is the contention that services do not appear related to work injury based on the results of a peer review and according to the TWCC21 'there is no medical evidence produced that the depression/psych condition is casually related to and/or naturally flows from the original compensable injury'. Other than a chiropractic peer review there is no other documentation submitted to support the denial. The peer review performed by Roger Canard, DC is primarily restricted to denial of chiropractic treatment. Diagnosis codes 316 and 296.82 are valid codes used to report symptoms of chronic pain that are secondary to the compensable injury. The patient was examined by her treating physician and due to constant pain and secondary emotional symptoms a referral was made to the chronic pain program…"

Amount in Dispute: $30,804.88

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Requestor seeks reimbursement for psychological evaluation, testing, biofeedback PPA, and chronic pain management program provided to the the claimant beginning on July 11, 2003 through October 24, 2003. However, the Division has conceded that the Claimant's psychological condition is not related to the compensable injury. Therefore, the Requestor is not entitled to reimbursement for these services. **1. The claimant's psychological condition is not part of the compensable injury**. On June 19, 2003, Carrier filed a PLN-11 disputing compensability of claimant's depression and/or psychological condition, attached as Exhibit 'A". A Benefit Contested Case Hearing was held on June 2, 2004, to decide whether the compensable injury of July 21, 1999, extends to and includes depression. On June 2, 2004, the Commission issued a Decision and Order finding that the compensable injury does not extend to and include depression. Attached as Exhibit 'B.' The Hearing Officer found that the claimant did not establish that the compensable injury includes depression and anxiety, noting the first mention of those conditions does not appear in the medical records until June of 2003, almost four years after the injury. **The Hearing Officer also found that, although the claimant did attend a program for depression (the pain management program as issue in this case), the records from that treatment noted not only pain because of the injury, but also anxiety relating to parenting and other familial issues.** The Hearing Officer noted that the Appeals Panel has held that while psychological conditions that are causally related to the compensable injury are compensable, psychological conditions traceable to the circumstances arising out of and immediately following the injury are not part of the compensable injury. The Hearing Officer concluded that the claimant's testimony and medical records were not persuasive or sufficient to establish that the claimant's psychological condition was causally related to the compensable injury instead of other circumstances arising out of and immediately following the injury. The

Decision was not appealed, and has now become final. **2. The services in question were provided to treat depression and/or psychological conditions that are not part of the compensable injury.** Division Rule 134.600(c) provides that, even where services are preauthorized as medically necessary, the carrier is not liable for payment if there has been a final adjudication that the injury is not compensable, or that the health care provided for a condition unrelated to the compensable injury. In this case, the care in question was provided to treat psychological conditions that were found to be unrelated to the compensable injury, and thus the carrier may not be held liable. The Health Insurance Claim Forms submitted by Requestor indicate that the services in question were provided to treat atypical depressive disorder. The letter of medical necessity dated June 16, 2003, submitted by Alexander Jimenez, D.C., attached as Exhibit 'C,' states that participation in a chronic pain management program is necessary to address the patient's 'chronic pain and depression.' The individual sessions notes from the pain management program list diagnosis codes 311 – Depressive Disorder not elsewhere classified and 316 – psychological disorder associated with a medical condition. On December 22, 2003, Requestor appealed the Carrier's initial denial of what Requestor admits are psychological services, arguing that diagnosis codes 315 (psychic factors associated with diseases classified elsewhere) and 296.82 (atypical depressive disorder) are valid codes used to report symptoms of chronic pain secondary to the compensable injury. Exhibit 'D.' As the Requestor used the diagnosis code for depression to refer to claimant's symptoms of chronic pain, the Commission's Order that depression is not part of the compensable injury also applies to those symptoms. The CPT Codes submitted for payment are 90380 – psychological test w/interpretation and report; 90801 – psychiatric diagnostic interview examination; 90915 – biofeedback training; other; 90900- biofeedback training; by EMG application; 90889 – unlisted psychiatric service or procedure; and 97799-unlisted physical medicine/rehabilitation service or procedure for the chronic pain management program. It is clear from the documentation, and Requestor has itself acknowledged that the care in question consists of psychological services provided to treat the claimant's psychological conditions, which have been found to be not causally related to the compensable injury. As the carrier may not be held liable for these services under Rule 134.600(c), the request for medical dispute resolution must be dismissed. The Medical Review Division may not order reimbursement where the Requestor has not complied with the applicable Commission rules and policies. SOAH has held that 'The MRD has a statutory obligation to ensure compliance with the rules and policies of the Commission, and to promote the stated purpose of the Act, i.e., to ensure the efficient utilization of health care by injured workers.' *See* SOAH Docket No. 453-03-4396.M5 (ALJ Lynch, April 2004). In this case, Requestor has not provided the documentation required to support its request for additional reimbursement for the services provided under CPT code 97799, and thus has not complied with the Medical Fee Guidelines. As SOAH has recognized, this is a threshold requirement necessary to establish entitlement to reimbursement. Where Requestor has not complied with Commission rules, the MRD may not order reimbursement, regardless of the reasons for the Carrier's denial. SOAH has specifically held that CPT Code 97799 is a DOP (documentation of procedure) code, which means that the maximum allowable reimbursement will be determined by written documentation attached to or included in the bill… The provider is required to provide the following information: an exact description of the service provided; the nature, extent and need (diagnosis and rationale) for the service; the time required to perform the service; and the skill level necessary for performance of the service… The Medical Fee Guideline also establishes particular requirements for chronic pain programs, which include entrance criteria for patients, supervision by a doctor, and daily documentation of treatment and patient response… Documentation reporting a charge for chronic pain management must also indicate how the service to be charged fits into a program of chronic pain… In this case, the documentation submitted by the provider shows that the chronic pain management program included acupuncture, meditation, yoga, pilates, massage therapy, nutrition, herbal remedies, tai chi, group psychotherapy and individual psychotherapy. The documentation consists of pre-printed form progress notes, which describe the service, the time and skill level required, and include generic statements regarding the need for the service, such as 'chronic pain patients may experience a limited understanding of human physiology, the muscular system, the neurological system, and the mind/body connection' or 'chronic pain patient will typically experience depression and/or anxiety with respect to their pain and limited functioning.' The documentation does not describe any connection between the services provided and the specific effects of the claimant's injury. Therefore, according to the decision cited above, Requestor has not complied with the requirements of the Medical Fee Guideline, and is not entitled to additional reimbursement for these services… The health care in question was provided for psychological conditions which have been adjudicated as unrelated to the compensable injury, relieving the Carrier of liability pursuant to Rule 134.600(c). According, the request for medical dispute resolution with respect to those dates of service must be dismissed. In the event that MRD declines to grant Carrier's Motion to Dismiss, it is the Carrier's position that Request is not entitled to additional reimbursement because Requestor has failed to comply with minimum documentation requirements to establish entitlement to reimbursement for a chronic pain management program. "

Response Submitted by: Stone, Loughlin & Swanson, LLP, PO Box 30111, Austin, TX 78755

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
July 11, 2003	CPT Codes 90830, 90801, 90830, 90915	$1060.00	$0.00
August 20, 2003 through October 2, 2003	CPT Code 97799-CPAP	$29,1187.50	$0.00
October 20, 2003 & October 24, 2003	CPT Codes 90806 and 90889	$157.38	$0.00
August 25, 2003 through August 29, 2003	CPT Code 99082 (Four DOS)	$400.00	$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.600 sets out the procedures for preauthorization, concurrent review, and voluntary certification of health care.
3. The services in dispute were reduced/denied by the respondent with the following reason codes:
   - R – Extent of Injury
   - (880-125) – Denied per insurance: NC (Non-Covered) procedure or service.
   - O – Denial after reconsideration
   - (920-002) – In response to a provider inquiry, we have re-analyzed this bill and arrived at the same recommended allowance.

Issues

1. Was the request for medical dispute resolution submitted in accordance with 28 Texas Administrative Code §133.307?
2. Was the Extent of Injury adjudicated?
3. Did the Requestor bill for treatment/services that were not part of the compensable injury?
4. Is the requestor entitled to reimbursement?

Findings

1. The requestor submitted the request for medical fee dispute resolution in accordance with 28 Texas Administrative Code §133.307 and is eligible for review.
2. A benefit review conference was held on April 8, 2004 to mediate resolution of the disputed issue, but the parties were unable to reach agreement. A benefit contested case hearing was held on June 2, 2004 to decide the following disputed issue: Does the Claimant's injury sustained on July 21, 1999 extend to and include depression? According to Hearing Officer Teresa G. Hartley, "The Claimant has the burden to prove, by a preponderance of the evidence, the extent of her injury. The medical records and the Claimant's testimony were insufficient to establish that the compensable injury includes depression and anxiety. The claimant testified that she first complained of symptoms of depression to her treating physician in 2000. However, the medical records do not discuss any type of symptoms relating to depression or diagnosis of depression in 2000. In fact, the first mention of depression or treatment relating to depression is in June of 2003. The Claimant did attend a program for the depression and the notes indicate not only pain because of the injury, but also anxiety related to parenting and other familial issues. The medical records were insufficient to establish that the Claimant complained of anxiety or depression as a result of her injury prior to June of 2003. In fact, the evidence was sufficient to establish that for almost four years the Claimant ever complained of depression or anxiety related to the injury. The Appeals Panel has stated that if a Claimant's psychological condition is causally related to the compensable injury, it is part of the compensable injury. The Appeals Panel has also concluded that if a Claimant's psychological problems are traceable to the circumstances arising out of and immediately following the injury, as opposed to being the result of the injury, the depression is not part of the compensable injury. Claimant has failed to establish that the depression is part of the compensable injury. The medical records were insufficient and fail to explain the lack of documented symptoms of

depression and anxiety. The Claimant's testimony and medical records were not persuasive or sufficient to establish that the Claimant's testimony and medical records were not persuasive or sufficient to establish that the Claimant's psychological condition is causally related to the compensable injury instead of other traceable circumstances arising out of and immediately following the injury. The medical report from the psychologist discuss the Claimant's 'stress to being at home not able to work; taking care of her children alone due to her husband being a truck driver and her parents considering divorce.' The Claimant failed to meet her burden on this issue…" The Decision and Order was signed and dated June 2, 2004.

3. In accordance with 28 Texas Administrative Code §134.600(c) the carrier is not liable under subsection (b) of this section if there has been a final adjudication that the injury is not compensable or that the health care was provided for a condition unrelated to the compensable injury.
4. Review of the submitted documentation finds that the treatment/services rendered by the requestor were not for the compensable injury.

Conclusion

For the reasons stated above, the Division finds that the requestor has not established that additional reimbursement is due. As a result, the amount ordered is $0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to $0.00 reimbursement for the disputed services.

Authorized Signature

		February 8, 2013
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.